

THE HONORABLE THOMAS O. RICE

Francis S. Floyd, WSBA No. 10642
ffloyd@floyd-ringer.com
John A. Safarli, WSBA No. 44056
jsafarli@floyd-ringer.com
Floyd, Pflueger & Ringer, P.S.
200 W. Thomas Street, Suite 500
Seattle, WA 98119-4296
Tel (206) 441-4455
Fax (206) 441-8484
Attorneys for Defendants

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

ROGELIO MONTES and MATEO
ARTEAGA,

Plaintiffs,

vs.

CITY OF YAKIMA; MICAH
CAWLEY, in his official capacity as
Mayor of Yakima; and MAUREEN
ADKISON, SARA BRISTOL, KATHY
COFFEY, RICK ENSEY, DAVE ETTL,
and BILL LOVER, in their official
capacity as members of the Yakima City
Council,

Defendants.

NO. 12-cv-3108-TOR

DEFENDANTS' STATEMENT OF
MATERIAL FACTS

Telephonic Argument

August 18, 2014 – 9:00 A.M.

Call-in Number: (888) 273-3658

Access Code: 2982935

Security Code: 3018

TABLE OF CONTENTS

A.	Yakima's Current Election System	1
B.	The Instant Action	1
C.	Mr. Cooper's First Expert Report.....	3
D.	Dr. Morrison's Criticisms of Mr. Cooper's Hypothetical Plans	6
E.	Mr. Cooper's Second Expert Report	8
F.	Mr. Cooper's Deposition	12
G.	Dr. Morrison's Deposition.....	15
H.	Mr. Cooper's Third Expert Report	19

1 Pursuant to Local Rule 56.1, Defendants submit this Statement of Material
2 Facts in support of their Summary Judgment Motion.

3 **A. Yakima's Current Election System**

4 1. The Yakima City Council is composed of seven Councilmembers.
5 (Declaration of John A. Safarli ("Safarli Decl."), Exhibit A [Charter of the City of
6 Yakima effective August 20, 2013] at 3.)

7 2. Three Councilmembers are elected from the City at-large, without
8 regard to residence in any particular area of the City. (*Id.* at 3-4.) These
9 Councilmembers are chosen at-large in both the primary and general elections.
10 (*Id.*)

11 3. The remaining four seats on the Council are assigned to one of four
12 districts. The Councilmember running for one of these seats must reside within
13 that district. (*Id.*)

14 4. In the primary election, only voters residing within a district cast
15 votes for candidates who also live within the district. (*Id.* at 4.)

16 5. The names of up to two candidates from each district who received
17 the most votes then appear on a citywide general ballot. (*Id.*) This method was
18 adopted through a City charter amendment approved by City voters in November
19 1976. (Safarli Decl., Ex. B [Charter amendment signed December 6, 1976] at 1-
20 3.)

21 **B. The Instant Action**

22 6. Plaintiffs filed this action in August 2012 against the City and the
23 Councilmembers who were serving on the City Council at the time of filing.
24 (ECF No. 1.)
25

1 7. Plaintiffs alleged that the City's method of electing Council
2 members violated Section 2 because it "impermissibly dilutes the Latino vote,
3 [and] does not allow for equal participation by Latinos in the political process."
4 (*Id.*)

5 8. Plaintiffs also claimed that the first *Gingles* factor could be satisfied
6 because the "Latino community in the City of Yakima is sufficiently numerous
7 and geographically compact such that one or more properly apportioned single-
8 member electoral districts can be drawn in which Latinos would constitute an
9 effective majority of eligible voters." (*Id.* at 8.)

10 9. Defendants responded by denying Plaintiffs' allegations. (ECF No.
11 18.)

12 10. Defendants also raised the affirmative defense that "[t]he relief
13 sought by Plaintiffs impermissibly departs from the one-person, one-vote
14 principle in violation of the Fourteenth Amendment to the United States
15 Constitution." (*Id.* at 8.)

16 11. Defendants also pled that Plaintiffs' complaint was "barred by the
17 affirmative defense of illegality." (*Id.* at 9.) In particular, Defendants alleged that
18 Plaintiffs' complaint "violate[d] Section 2 of the Voting Rights Act's prohibition
19 against voting schemes designed to effect racially proportional representation."¹
20 (*Id.*)

21
22
23 ¹ In Defendants' Summary Judgment Motion, Defendants contend that Plaintiffs'
24 case also violates Section 2's prohibition on vote dilution. Although this
25 argument is a variation of the general illegality defense that was pled in

C. Mr. Cooper's First Expert Report

12. To establish the first *Gingles* factor, Plaintiffs retained William S. Cooper, an expert witness with experience in demographics and redistricting. (Safarli Decl., Ex. C [Declaration of William Cooper] at 1-2.)

13. Mr. Cooper opined that the first *Gingles* factor could be met because “it is possible to create two out of seven City Council districts where Latinos of voting age would be a majority and where Latino registered voters would compromise a majority of registered voters.” (*Id.* at 2.)

14. To support his opinion, Mr. Cooper's report presented two hypothetical redistricting plans, Illustrative Plans 1 and 2. (*Id.* at 22-25.)

15. Both plans divided the City into seven, single-member districts. (*Id.* at 23, 25.)

16. Mr. Cooper's expert report listed the population for each district. His report also contained the percentage of each district's Latino citizen, voting-age population (“LCVAP”).

Defendants' answer, Defendants intend to file a stipulated motion that amends their answer to specifically allege that Plaintiffs' complaint “violates Section 2 of the Voting Right Act's prohibition against voting schemes designed to effect racially proportional representation *and Section 2 of the Voting Right Act's prohibition against vote dilution*” (additional language emphasized). Pursuant to Fed. R. Civ. P. 15(a)(2), Plaintiffs have consented to this limited amendment and a motion is forthcoming.

1 17. Each illustrative plan contained one majority-minority district. (*Id.*)
 2 The majority-minority district in Illustrative Plan 1 has a LCVAP of 50.25%.
 3 Illustrative Plan 2's majority-minority district has a LCVAP of 50.13%. Mr.
 4 Cooper noted that "[a] significant segment of the Latino population in Yakima is
 5 non-citizen." (*Id.* at 11.) He also cited estimates from the U.S. Census Bureau
 6 showing that slightly less than half of Latino adults in Yakima are non-citizens.
 7 (*Id.*)

8 18. Through subsequent communications with Plaintiffs' counsel,
 9 Defendants obtained the absolute number of Latino and non-Latino voting-age
 10 citizens in each district. (Safarli Decl., Ex. D [letter of Plaintiffs' counsel Ben
 11 Stafford dated February 21, 2013] at 3.)

12 19. The following tables contain the aggregate data for Mr. Cooper's
 13 Illustrative Plans 1 and 2. The figures for each district's total population, Latino
 14 eligible voter population, and non-Latino eligible voter population were provided
 15 by Mr. Cooper or Plaintiffs' counsel. The other columns of data were calculated
 16 by Defendants' counsel.

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

Illustrative Plan 1

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean ²
1	12533	35.21%	4414.08	2217.91	2196.17	50.25%	2.84	-43.02%
2	13358	39.18%	5233.29	2258.08	2975.21	43.15%	2.55	-32.45%
3	12859	70.44%	9058.30	2144.56	6913.74	23.68%	1.42	+16.92%
4	13175	57.68%	7599.76	2018.64	5581.12	26.56%	1.73	-2.90%
5	12683	70.62%	8956.33	1099.23	7857.10	12.27%	1.42	+15.60%
6	13176	72.18%	9511.15	677.69	8833.46	7.13%	1.39	+22.76%
7	13283	71.23%	9460.91	1338.07	8122.84	14.14%	1.40	+22.11%
Total	91067	n/a	54233.82	11,754.18	42479.64	n/a	n/a	65.78% ³

Illustrative Plan 2

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12969	35.06%	4546.63	2279.36	2267.27	50.13%	2.85	-41.31%
2	12822	39.76%	5097.51	2172.07	2925.44	42.61%	2.52	-34.19%
3	13079	70.21%	9183.10	2171.92	7011.18	23.65%	1.42	+18.55%
4	13431	57.40%	7709.31	2063.73	5645.58	26.77%	1.74	-0.47%
5	12761	70.77%	9030.36	1055.32	7975.04	11.69%	1.41	+16.57%
6	12722	72.29%	9197	673.72	8523.28	7.32%	1.38	+18.73%
7	13283	71.23%	9460.91	1338.07	8122.84	14.14%	1.40	+22.13%
Total	91067	n/a	54224.82	11754.19	42470.63	n/a	n/a	63.44%

² The percentage deviation from the mean is calculated by (1) determining the average CVAP for each district (*e.g.*, 54224.82 divided by 7, or 7747.69); (2) dividing Mr. Cooper's CVAP figure for that district by the average CVAP figure (*e.g.*, 4414.08 divided by 7747.69, or 0.57); and (3) subtracting 1 from that number (-0.43), then converting it into a percentage (-43%).

³ This figure represents the maximum deviation—that is, the value of the range between the greatest negative deviation from the mean (-43.02%) and the district with the greatest positive deviation from the mean (+22.76%).

20. In Illustrative Plans 1 and 2, District 1 (the majority-minority district) has about half as many eligible voters as Districts 3, 5, 6, and 7, and about 60% as many eligible voters as District 4. Additionally, District 2 in both Illustrative Plans has between 54% to 58% as many eligible voters as Districts 3, 5, 6, and 7, and 66% to 69% as many eligible voters as District 4.

21. In both Illustrative Plans 1 and 2, Mr. Cooper packed Districts 1 and 2 with people who are not eligible to vote. This results in the dilution of voting power among eligible voters of minority groups who reside in other districts. For example, Districts 1 and 3 in Illustrative Plan 1 each contain about 1/5th of the City's Latino eligible voters (2217.91 and 2144.56, respectively). However, District 1 contains about twice as many eligible voters overall as District 3. Consequently, an eligible Latino voter residing in District 3 has about half the voting strength as an eligible Latino voter from District 1.

D. Dr. Morrison's Criticisms of Mr. Cooper's Hypothetical Plans

22. To rebut Mr. Cooper's opinions, Defendants retained Peter Morrison, Ph.D., an applied demographer.⁴ (Safarli Decl., Ex. E [Expert Report of Peter Morrison, Ph.D.])

23. Dr. Morrison criticized Mr. Cooper's report on a number of grounds, including the grossly malapportioned number of voting-age citizens in the

⁴ The following day, Defendants disclosed a revised report that fixed the numbering of the paragraphs in Dr. Morrison's report. No other substantive changes were made. Defendants' Summary Judgment Motion relies on the version with the fixed paragraph numbers.

1 districts from Illustrative Plans 1 and 2. Dr. Morrison opined that Mr. Cooper's
2 "single-minded purpose" was to create a district with a voting-age citizen
3 population that was a majority Latino, even though that "would invariably cause
4 the votes of eligible voters in that one district to carry far more weight than a vote
5 in another district." (*Id.* at 14-15.)

6 24. Dr. Morrison calculated that District 1 in Mr. Cooper's Illustrative
7 Plan 1 contains approximately 1/7th or 14.3% of the City's total population
8 (12,533 of 91,067) but only 1/13th or 8.4% of the City's eligible voters (4,414.08
9 out of 54,233.82). As such, "8.4% of eligible voters [in District 1] would
10 necessarily exercise 14.3% of the power in electing City Council members—in
11 effect, 'one person, 1.7 votes.'" (*Id.* at 15.) Meanwhile, District 7 in Mr. Cooper's
12 Illustrative Plan 1 also contains about 14% of the City's population, but nearly
13 1/5th (17.4%) of the City's eligible voters (9,460.91 out of 54,233.82).

14 25. Put differently, an eligible voter from District 1 casts a vote on
15 behalf of 2.8 residents of that district, while an eligible voter from District 7
16 would cast a vote on behalf of 1.4 residents. This results in a "political premium"
17 for votes in District 1, while votes in District 7 are "underweighted." (*Id.* at 15.)
18 Dr. Morrison concluded that this "imbalance" results from Mr. Cooper "giving
19 exclusive emphasis to Latino ethnicity in drawing each District 1." (*Id.* at 16.)

20 26. Dr. Morrison also determined that a majority of the City's American
21 Indian, Asian, and African American voting-age citizens would be underweighted
22 because they would reside in districts with a high proportion of eligible voters.
23 (*Id.* at 16.)
24
25

27. At the conclusion of his discussion regarding the first *Gingles* factor, Dr. Morrison posed two questions: First, “[i]s it constitutional to undersize the citizen population in one (Latino) district while oversizing the citizen population in another district? In other words, should only 4,414 or 4,547 citizens in demonstration District 1 get to elect a member to the Yakima City Council . . . while 9,461 or 9,511 citizens in a neighboring district get to elect another city council member?” Second, “[w]ould this electoral imbalance cause the unlawful dilution of votes cast by one or more protected groups (e.g. American Indians or Asians) whose numbers are disproportionately concentrated outside demonstration District 1?” (*Id.* at 17.)

E. Mr. Cooper’s Second Expert Report

28. In his second expert report, Mr. Cooper created five new hypothetical redistricting plans: Hypothetical Plans A through E. (Safarli Decl., Ex. F [Supplemental Declaration of William Cooper] at 12-13, 22-23, 25-30.)

29. Mr. Cooper’s plan included only the total population for each district and the percentage of each district’s population that are Latino eligible voters.

30. Through subsequent correspondence, Defendants’ counsel received the absolute number of Latino and non-Latino eligible voters in each district. (Safarli Decl., Ex. G [email of Abha Khanna dated May 1, 2013 and attachment]). In the tables below, Defendants’ counsel calculated the absolute number of overall voting-age citizens and each district’s percentage of the total population that are eligible voters.

1 31. According to Mr. Cooper, Hypothetical Plans A, B and C were
2 created to address some of Dr. Morrison's criticisms that do not pertain to this
3 motion. (Safarli Decl., Ex. F at 12, 22-27). But these three plans suffer from the
4 same imbalance as Illustrative Plans 1 and 2: Districts 1 and 2 have nearly half as
5 many eligible voters as Districts 3, 5, 6 and 7.

6 32. Hypothetical Plans D and E were created in direct response to Dr.
7 Morrison's conclusions regarding the imbalance in eligible voters throughout the
8 districts. (*Id.* at 27-31.) Mr. Cooper's Hypothetical Plan D equalized the number
9 of citizens in each district, which resulted in substantial deviations among each
10 district's population. (*Id.* at 28.) Mr. Cooper's Hypothetical Plan E equalized the
11 number of eligible voters in each district, which also caused significant
12 population deviation. (*Id.* at 30.) Both Hypothetical Plans D and E contain a
13 district in which the majority of eligible voters are Latino. (*Id.* at 28, 30.)
14 However, Mr. Cooper distanced himself from these plans by stating that "I do not
15 believe that *Hypothetical Plans D* or *E* should be relied upon for the first prong of
16 *Gingles* or as appropriate remedies in this case." (*Id.* at 31.)

17 33. Moreover, even though Mr. Cooper's Hypothetical Plans D and E
18 equalized the number of citizens and adult citizens, respectively, the ratio of adult
19 citizens to population varies wildly. For example, 35.54% of the population in
20 Hypothetical Plan E's District 1 are adult citizens, while District 7's population is
21 more than 70% adult citizens.

22 //

23 //

24 //

Hypothetical Plan A

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP ⁵	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12819	34.43%	4414.20	2302.80	2111.40	52.17% or 50.18%	2.90	-43.02%
2	12421	39.61%	4920.30	2119.06	2801.24	43.07% / or 41.81%	2.52	-36.49%
3	13026	70.13%	9135.01	2163.50	6971.51	23.68% or 24.16%	1.42	+17.91%
4	12676	58.52%	7455.41	1894.85	5560.56	25.42% or 25.78%	1.7	-3.77%
5	13666	68.32%	9336.82	1258.21	8078.61	13.48% or 13.54%	1.46	+20.51%
6	13176	72.19%	9511.15	677.69	8833.46	7.13% or 7.14%	1.39	+22.76%
7	13283	71.23%	9460.91	1338.07	8122.84	14.14% or 14.16%	1.40	+22.12%
Total	91067	n/a	54233.8	11754.18	42479.62	n/a	n/a	65.78%

Hypothetical Plan B

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12995	31.69%	4119.22	2311.53	1807.69	56.12%	3.15	-46.83%
2	12706	48.01%	6099.61	1946.17	4153.44	31.91%	2.08	-21.27%
3	12632	68.49%	8651.99	2207.27	6444.72	25.51%	1.46	+11.67%
4	12866	54.96%	7070.82	2126.57	4944.25	30.08%	1.82	-8.74%
5	13323	69.05%	9200.11	1055.72	8144.39	11.48%	1.45	+18.75%
6	13413	72.25%	9690.90	714.19	8976.71	7.37%	1.38	+25.08%
7	13132	71.59%	9401.17	1392.75	8008.42	14.81%	1.40	+21.34%
Total	91067	n/a	54233.82	11754.2	42479.62	n/a	n/a	71.91%

⁵ In Hypothetical Plan A, Mr. Cooper calculated two different Latino CVAP percentages for each district because of a methodological disagreement raised by Dr. Morrison that does not pertain to this motion. (See Safarli Decl., Ex. F at 2-14.)

Hypothetical Plan C

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12384	31.25%	3870.40	2234.77	1635.63	57.74%	3.20	-50.04%
2	13243	47.66%	6311.90	2009.58	4302.32	31.84%	2.10	-18.53%
3	12632	68.49%	8651.99	2207.27	6444.72	25.51%	1.46	+11.67%
4	12940	54.93%	7107.34	2139.91	4967.43	30.11%	1.82	-0.08%
5	13323	69.05%	9200.11	1055.72	8144.39	11.48%	1.45	+18.75%
6	13413	72.25%	9690.90	714.19	8976.71	7.37%	1.38	+25.08%
7	13132	71.59%	9401.17	1392.75	8008.42	14.81%	1.40	+21.34%
Total	91067	n/a	54233.81	11754.19	42479.62	n/a	n/a	75.12%

Hypothetical Plan D

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	16622	33.41%	5554.14	3068.87	2485.27	55.25%	2.99	-28.31%
2	14403	48.68%	7011.25	2112.16	4899.09	30.13%	2.05	-9.50%
3	11601	73.70%	8549.49	1235.31	7314.18	14.45%	1.36	+10.35%
4	11783	65.58%	7727.61	2192.93	5534.68	28.38%	1.52	-0.25%
5	12372	62.18%	7692.76	1565.33	6127.43	20.35%	1.61	-0.71%
6	11821	76.92%	9092.92	535.57	8557.35	5.89%	1.30	+17.36%
7	12465	69.03%	8605.63	1044.02	7561.61	12.13%	1.45	+11.07%
Total	91067	n/a	54233.80	11754.19	42479.61	n/a	n/a	45.67%

Hypothetical Plan E

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	21265	35.63%	7577.36	3876.93	3700.43	51.16%	2.81	-2.20%
2	14972	50.59%	7574.01	2333.24	5240.77	30.81%	1.98	-2.24%
3	10671	74.01%	7897.12	1261.12	6636	15.97%	1.35	+1.93%
4	11812	67.31%	7951.1	1950.66	6000.44	24.53%	1.49	+2.63%
5	10718	71.51%	7664.53	1114.22	6550.31	14.54%	1.40	-1.07%
6	10751	73.81%	7934.83	205.6	7729.23	2.59%	1.35	-2.42%
7	10878	70.19%	7634.86	1012.42	6622.44	13.26%	1.42	-1.46%
Total	91067	n/a	54233.81	11754.19	42479.62	n/a	n/a	4.87%

1 34. Although Mr. Cooper's Hypothetical Plan E has very little deviation
2 among the eligible voter populations, the maximum deviation among total
3 population is 81.43% (District 1's deviation from the mean population of
4 13009.57 is +63.46%, while District 3's deviation is -17.98%). Similarly,
5 Hypothetical Plan D, which roughly equalizes citizens of all ages among the
6 districts, has a maximum total population deviation of 38.56% (District 1's
7 deviation from the mean population of 13009.57 is +27.78% and District 3's
8 deviation is -10.78%).
9

10 **F. Mr. Cooper's Deposition**

11 35. In his deposition, Mr. Cooper responded to Dr. Morrison's criticism
12 that Mr. Cooper had a "single-minded purpose" of packing Latinos into a single
13 district "to boost Latinos' *share* among whatever *number* of voting-age citizens
14 that district happened to encompass." (Safarli Decl., Ex. E [expert report of Dr.
15 Morrison] at 14 (emphasis in original)). Mr. Cooper denied that he simply
16 "create[d] an LCVAP district and then stop[ped]." (Safarli Decl., Ex. H
17 [deposition transcript of Mr. Cooper] at 126:15-17.)

18 36. However, when asked if he attempted to "aggregate the most heavily
19 Latino contiguous areas so [he] could boost the Latino share among whatever
20 number of voting-age citizens that proposed district happened to encompass," Mr.
21 Cooper acknowledged that this aggregation was a "factor" in the creation of his
22 hypothetical plans. (*Id.* at 127:10-24.)

23 37. Mr. Cooper then testified that aggregating the Latino share of voting-
24 age citizens could not be considered "at the expense of other traditional
25

1 redistricting concerns,” such as “one-person/one-vote” and “compactness.” (*Id.* at
2 128:1-8.)

3 38. Mr. Cooper explained that he “looked at other factors,” such as
4 “precinct lines,” “general compactness,” and “one-person/one-vote.” (*Id.* at
5 126:12-15.) Mr. Cooper explained that he considered “one-person/one-vote” by
6 ensuring that “no single district is more than five percent from the ideal
7 population size,” (*i.e.*, 1/7th of the City’s total population). (*Id.* at 126:18-25.)

8 39. However, Mr. Cooper testified that, for Illustrative Plans 1 and 2 and
9 Hypothetical Plans A, B, and C, he simply attempted to equalize the overall
10 population for each district and did not consider the variation among any other
11 figures, such as the number of eligible voters. (*Id.* at 42:6-12; 43:22-44:2.)

12 40. For Hypothetical Plans D and E, Mr. Cooper did consider the
13 variation among other figures, namely the number of citizens in each district
14 (Hypothetical Plan D) and the number of eligible voters in each district
15 (Hypothetical Plan E). (Safarli Decl., Ex. F [Supplemental Declaration of William
16 S. Cooper] at 27-32).

17 41. In his deposition, however, Mr. Cooper testified that he created
18 Hypothetical Plans D and E exclusively in response to Dr. Morrison’s “lengthy
19 discussion about voting power, and the fact that because there are more non-
20 citizens in districts 1 and 2, that the voting power for the rest of the city, residents
21
22
23
24
25

1 in other parts of the city, would be diminished.”⁶ (Safarli Decl., Ex. H at 76:18-
2 77:10; *see also id.* at 130:25-131:7.)

3 42. Although Mr. Cooper demonstrated that a majority-minority district
4 could be created using eligible voters as the apportionment basis, he did not
5 testify that he made any effort whatsoever to balance the number of eligible
6 voters in each district (one of the traditional redistricting factors) with other such
7 factors. Indeed, Mr. Cooper testified that “the fact that there may be more citizens
8 in one district than another really cannot be dealt with.” (*Id.* at 131:25-132:6.)

9 43. Mr. Cooper was then asked specifically about his understanding of
10 “electoral imbalance.” (*Id.* at 136:12-13.) Mr. Cooper testified that he understood
11 “electoral imbalance” in this litigation to refer to the fact that “there are a lot of
12 noncitizens in districts 1 and 2, then people in the other parts of the city are not
13 given an opportunity to have their votes count as much as those who are citizens
14 in districts 1 and 2.” (*Id.* at 136:20-24.)

15 44. Mr. Cooper was asked whether he was concerned about “electoral
16 imbalance” in Illustrative Plans 1 and 2 and Hypothetical Plans A, B, and C. (*Id.*
17

18 _____
19 ⁶ Mr. Cooper also explained his motivation for creating his other plans.
20 According to Mr. Cooper, he produced Illustrative Plans 1 and 2 and Hypothetical
21 Plan A to be “illustrative plans.” (Safarli Decl., Ex. H at 126:5-8; *see also* 134:11-
22 12.) He testified that these illustrative plans would be a starting point in the
23 remedy phase. (*Id.* at 136:6-11.) In contrast, he created Hypothetical Plans B and
24 C “solely for the purpose of meeting *Gingles* I.” (*Id.* at 126:8-9.)
25

1 at 137:19-21.) Mr. Cooper responded that he “didn’t look at that question
2 carefully.” (*Id.* at 137:22.)

3 **G. Dr. Morrison’s Deposition**

4 45. Dr. Morrison—who attended Mr. Cooper’s deposition—testified that
5 Yakima was

6 an exemplary case of the . . . dilemma that arises because of the
7 tension within the law. That we’re obliged to draw districts based on
8 total population but when one gives predominant emphasis to race or
9 ethnicity, what can happen . . . in certain local demographic settings,
10 is that you end up with an effort to concentrate Latinos in a district in
11 order to make them a majority of that district and empower them to
12 elect candidates of their choice, while at the same time you are
13 disenfranchising people in other districts who are not only
14 nonHispanic Whites but may well be other racial minorities or in fact
15 many other Hispanics who happen to be citizens living in another part
16 of [t]own. And it creates a tension within the law because originally
17 drawing districts based on total population would closely approximate
18 equipopolous districts in terms of persons who were entitled to vote.
19 But because of the demography that has come about in this country in
20 Latino communities you get this paradox that has only come to the
21 attention of demographers . . . in the last ten years. And it’s not
22 something that one encounters when dealing with the issue of African
23 American versus nonAfrican American populations.

18 (Safarli Decl., Ex. I at 24:22-25:23.)

19 46. Dr. Morrison was then asked whether parties are “obligated to use
20 total population as the apportionment basis” in redistricting plans. (*Id.* at 52:10-
21 11.) Dr. Morrison responded that he believed “the law says one does,” but
22 explained that some deviation in population size among the districts was
23 permitted in order to “balanc[e] a number of redistricting criteria,” such as
24
25

1 “communit[ies] of interest,” “avoid[ing] splitting a precinct,” or “avoid[ing] an
2 extreme degree of electoral imbalance.” (*Id.* at 52:12-53:24.)

3 47. Dr. Morrison testified that Mr. Cooper did not “seem to be able to
4 conceptualize the factors that need to be balanced when you talk about balancing
5 traditional redistricting criteria.” (*Id.* at 55:12-18.) Dr. Morrison continued:

6 [Mr. Cooper] seems to be totally unaware of what was
7 happening with the damage that was being done to the weighting of
8 votes across the city by configuring District 1 in that way.

9 [. . .] I certainly haven’t read in his report and didn’t hear in the
10 deposition yesterday any specific way in which he accounted for the
11 various traditional redistricting criteria. . . . I didn’t hear him respond
12 specifically how he had taken account, for example, of the differential
13 weighting of votes. That is to say I would have liked to have heard
14 him say [‘]I noticed that there was a severe imbalance and, therefore, I
15 took this step to try to moderate the imbalance. So while it still existed
16 . . . I had reduced its severity as one step in trying to balance
17 redistricting criteria.[’]

18 (*Id.* at 55:18-56:10.)

19 48. Dr. Morrison testified that he believed Mr. Cooper had not created a
20 plan “that balances these criteria where one can look at it and say yes, it’s a
21 reasonable compromise for someone who has to take all these things into
22 consideration.” (*Id.* at 56:22-25.)

23 49. Dr. Morrison further testified that he did not believe Mr. Cooper
24 “had even thought about the problem of the severe overweighting and
25 underweighting of votes depending on which district an elector happens to reside
in.” (*Id.* at 57:2-6.) Dr. Morrison stated that “at a minimum,” Mr. Cooper
“subordinated” the traditional redistricting criteria of “electoral imbalance” to

1 “[r]ace or ethnicity,” and that race or ethnicity was “the predominant factor in
2 drawing District 1 in all of these plans.” (*Id.* at 57:13-20; 58:14-16.)

3 50. Later in his deposition, Dr. Morrison was asked whether his
4 “position” was that the “eligible voters in District 1 may be more heavily
5 weighted than those in the surrounding district.” (*Id.* at 159:1-3.) Dr. Morrison
6 agreed. (*Id.* at 159:4.)

7 51. He was then asked whether this “issue go[es] to whether or not
8 plaintiffs can satisfy *Gingles* 1.” (*Id.* at 159:5-6.) Dr. Morrison explained that the
9 issue does raise doubts “about a plan being able to satisfy *Gingles* 1 when there is
10 such a severe malapportionment of eligible voters.” (*Id.* at 159:18-23.)

11 52. Dr. Morrison testified that the concern about the malapportionment
12 of eligible voters does not mean that a Section 2 plaintiff should not attempt to
13 create a majority-minority district under the first *Gingles* factor. (*Id.* at 164:1-3).
14 Instead, the concern is “a matter of recognizing the traditional redistricting
15 criteria, all of them, and trying to achieve some reasonable balance among them.
16 And it requires on the part of the person doing it first all recognizing them all,
17 which . . . Mr. Cooper has overlooked several and . . . seems not to understand
18 what they are, and secondly, achieving some balance among them in a way that
19 one can articulate what the balance is and what the rationale was. And again that
20 is another step where I haven’t seen any evidence that that occurred in what Mr.
21 Cooper did.” (*Id.* at 167:5-15.)

22 53. Dr. Morrison was also asked if there was a “tipping point” for a
23 magnitude of electoral imbalance that would make it “unacceptable.” (*Id.* at
24 166:10-12.) Dr. Morrison responded that he “d[idn’t] envision it as a tipping
25

1 point.” (*Id.* at 166:13-14.) Instead, he “envision[ed] it as . . . how avoidable is the
 2 magnitude. That is to say however big it could be, how far away from that
 3 maximum are you or however big is it, can you make it smaller while respecting
 4 other traditional redistricting considerations.” (*Id.* at 166:13-18.)

5 54. Dr. Morrison was then asked what his “proposed solution” would be
 6 to address the concern about Mr. Cooper’s disregard for electoral imbalance. (*Id.*
 7 at 169:13-16.) Dr. Morrison responded: “My proposed solution would be to try to
 8 adjust the boundaries of District 1 and I guess to some extent District 2 in a way
 9 that would accord with [Mr. Cooper’s] desire to concentrate Latinos in a district
 10 but that would have the effect of perhaps reducing the degree of imbalance
 11 somewhat.” (*Id.* at 169:17-21.)

12 55. Dr. Morrison was then asked about the paragraph in his report stating
 13 that “eligible voters who would be most severely disadvantaged include the
 14 majority of the City’s American Indian, Asian, and African American eligible
 15 voters.” (*Id.* at 170:14-171:2; Safarli Decl., Ex. E [report of Dr. Morrison] at 16.)
 16 Dr. Morrison explained that he did not present data in his report to support this
 17 conclusion, but he had “analyzed the data” and “it’s obvious that that would be
 18 the effect.”⁷ (*Id.* at 171:3-9.) Dr. Morrison testified that he would likely have an
 19

20
 21 ⁷ The data for this issue are contained in the publicly-available U.S. Census
 22 Bureau’s 2007-2011 American Community Survey 5-Year Estimate (“5-Year
 23 Estimate”), which was relied on by both Mr. Cooper and Dr. Morrison. The 5-
 24 Year Estimate shows the voting-age citizen population of American Indians,
 25 Asians, and African Americans within each census block group that is wholly or

1 exhibit at trial demonstrating the disadvantage to minorities caused by Mr.
2 Cooper's plan. (*Id.* at 171:8-9).

3 56. Lastly, Dr. Morrison was asked how he knew whether Mr. Cooper
4 "gave predominant emphasis or maybe even exclusive emphasis to . . . Latino
5 ethnicity." (*Id.* at 180:17-19.) Dr. Morrison responded that "[c]ertainly there is
6 every indication that he gave predominant emphasis in the sense that I don't see
7 any evidence of any other factor that was given equal importance." (*Id.* at 181:18-
8 21; 182:1-5.)

9 **H. Mr. Cooper's Third Expert Report**

10 57. On April 25, 2014, Plaintiffs produced a third report from Mr.
11 Cooper, which incorporated more recent citizenship and voter registration
12 statistics for Illustrative Plans 1 and 2 and Hypothetical Plans A, B and C. (Safarli
13 Decl., Ex. J [Second Supplemental Declaration of William Cooper] at 1-5.)

14 58. Plaintiffs' counsel provided additional data for various figures in the
15 districts created by Mr. Cooper. (Safarli Decl., Ex. K [email of Plaintiffs' counsel
16 Ben Stafford dated May 2, 2014 and attachment]).

17 59. Cooper did not provide updated information for Hypothetical Plans
18 D and E. *Id.* at 4 n.6.
19

20
21
22 partly within the hypothetical districts created by Mr. Cooper in each of his
23 redistricting plans. (Safarli Decl., Ex. F.) Tabulating these data would reveal that
24 a majority of voting-age American Indians and Asians reside outside of Districts
25 1 and 2 from Mr. Cooper's hypothetical plans.

Illustrative Plan 1 (updated)

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12533	38.43%	4815.95	2625.14	2190.80	54.51%	2.60	-38.75%
2	13358	40.51%	5411.56	2506.26	2905.30	46.31%	2.47	-31.18%
3	12859	68.30%	8792.25	2180.90	6611.36	24.80%	1.46	+11.81%
4	13175	58.99%	7772.07	2074.60	5697.47	26.69%	1.70	-1.16%
5	12683	69.15%	8769.88	1071.01	7698.88	12.21%	1.45	+11.52%
6	13176	73.12%	9634.26	685.23	8949.03	7.11%	1.37	+22.52%
7	13283	74.14%	9847.40	1491.29	8356.11	15.14%	1.35	+25.23%
Total	91067	n/a	55043.37	12634.43	42408.95	n/a	n/a	63.98%

Illustrative Plan 2 (updated)

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12969	38.66%	5013.86	2742.57	2271.29	54.70%	2.59	-36.24%
2	12822	41.03%	5260.51	2397.52	2862.99	45.58%	2.44	-33.10%
3	13079	68.05%	8900.04	2205.47	6694.57	24.79%	1.47	+13.18%
4	13431	58.59%	7869.02	2109.44	5759.58	26.81%	1.71	+0.01%
5	12761	69.26%	8837.92	1018.78	7819.15	11.53%	1.44	+12.40%
6	12722	73.22%	9314.62	669.36	8645.26	7.19%	1.37	+18.46%
7	13283	74.14%	9847.40	1491.29	8356.11	15.14%	1.35	+25.23%
Total	91067	n/a	55043.37	12634.43	42408.95	n/a	n/a	61.47%

Hypothetical Plan A (updated)

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12819	39.20%	5025.58	2790.59	2235.00	55.53%	2.55	-36.09%
2	12421	39.42%	4896.81	2314.16	2582.64	47.26%	2.54	-37.73%
3	13026	68.48%	8920.28	2212.74	6707.54	24.81%	1.46	+13.44%
4	12676	59.63%	7559.12	1896.08	5663.04	25.08%	1.68	-3.87%
5	13666	67.02%	9159.93	1244.34	7915.59	13.58%	1.49	+16.49%
6	13176	73.12%	9634.26	685.23	8949.03	7.11%	1.37	+22.52%
7	13283	74.14%	9847.40	1491.29	8356.11	15.14%	1.35	+25.23%
Total	91067	n/a	55043.38	12634.43	42408.95	n/a	n/a	62.96%

Hypothetical Plan B (updated)

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12995	34.17%	4439.74	2632.75	1806.99	59.30%	2.93	-43.54%
2	12706	48.01%	6099.86	2111.74	3988.12	34.62%	2.08	-22.42%
3	12632	65.99%	8336.09	2230.27	6105.82	26.75%	1.52	+6.01%
4	12866	59.19%	7615.99	2369.45	5246.54	31.11%	1.69	-3.15%
5	13323	67.84%	9038.34	1063.85	7974.50	11.77%	1.47	+14.94%
6	13413	72.80%	9764.91	703.33	9061.58	7.20%	1.37	+24.18%
7	13132	74.23%	9748.45	1523.05	8225.40	15.62%	1.35	+23.97%
Total	91067	n/a	55043.38	12634.44	42408.95	n/a	n/a	67.72%

Hypothetical Plan C (updated)

District	Pop.	% CVAP of pop.	CVAP	Latino CVAP	Non-Latino CVAP	% Latino CVAP of overall CVAP	Ratio of CVAP to pop.	% deviation of CVAP from mean
1	12384	33.93%	4202.31	2559.62	1642.69	60.91%	2.95	-46.55%
2	13243	47.26%	6307.26	2175.80	4131.45	34.50%	2.10	-19.79%
3	12632	65.99%	8336.09	2230.27	6105.82	26.75%	1.52	+6.01%
4	12940	59.09%	7646.02	2378.51	5267.51	31.11%	1.69	-2..76
5	13323	67.84%	9038.34	1063.85	7974.50	11.77%	1.47	+14.94%
6	13413	72.80%	9764.91	703.33	9061.58	7.20%	1.37	+24.17%
7	13132	74.23%	9748.45	1523.05	8225.40	15.62%	1.35	+23.97%
Total	91067	n/a	55043.38	12634.43	42408.95	n/a	n/a	70.72%

//

//

//

//

//

//

//

//

//

1
2 RESPECTFULLY SUBMITTED this 1st day of July, 2014.

3 s/ John A. Safarli

4 Francis S. Floyd, WSBA No. 10642

5 ffloyd@floyd-ringer.com

6 John A. Safarli, WSBA No. 44056

7 jsafarli@floyd-ringer.com

8 Floyd, Pflueger & Ringer, P.S.

9 200 W. Thomas Street, Suite 500

10 Seattle, WA 98119-4296

11 Tel (206) 441-4455

12 Fax (206) 441-8484

13 *Attorneys for Defendants*

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington, that on the date noted below, a true and correct copy of the foregoing was delivered and/or transmitted in the manner(s) noted below:

Sarah Dunne
La Rond Baker
ACLU OF WASHINGTON
FOUNDATION
901 Fifth Avenue, Suite 630
Seattle, WA 98164
(206) 624-2184
dunne@aclu-wa.org
lbaker@aclu-wa.org

*Counsel for
Plaintiffs*

☐ VIA EMAIL
☐ VIA FACSIMILE
☐ VIA MESSENGER
☐ VIA U.S. MAIL
☒ VIA CM/ECF
SYSTEM

Joaquin Avila
THE LAW FIRM OF JOAQUIN
AVILA
P.O. Box 33687
Seattle, WA 98133
(206) 724-3731
jgavotingrights@gmail.com

*Counsel for
Plaintiff Rogelio
Montes*

Pro Hac Vice

☐ VIA EMAIL
☐ VIA FACSIMILE
☐ VIA MESSENGER
☐ VIA U.S. MAIL
☒ VIA CM/ECF
SYSTEM

Laughlin McDonald
ACLU FOUNDATION, INC.
VOTING RIGHTS PROJECT
230 Peachtree Street, Suite 1440
Atlanta, GA 30303-1227
(404) 523-2721
lmcdonald@aclu.org

*Counsel for
Plaintiff Mateo
Arteaga*

Pro Hac Vice

☐ VIA EMAIL
☐ VIA FACSIMILE
☐ VIA MESSENGER
☐ VIA U.S. MAIL
☒ VIA CM/ECF
SYSTEM

Kevin J. Hamilton
William B. (Ben) Stafford
Abha Khanna
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
(206) 359-8000
khamilton@perkinscoie.com
wstafford@perkinscoie.com
akhanna@perkinscoie.com

*Counsel for
Plaintiffs*

☐ VIA EMAIL
☐ VIA FACSIMILE
☐ VIA MESSENGER
☐ VIA U.S. MAIL
☒ VIA CM/ECF
SYSTEM

DATED this 1st day of July, 2014

s/ John A. Safarli
John A. Safarli, WSBA No. 44056